

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

PATRICIA RAYMOND,)	
)	
Complainant,)	CASE NO. 21-0787-EL-CSS
)	
vs.)	
)	
OHIO EDISON COMPANY,)	
)	
Respondent.)	
)	

THE OHIO EDISON COMPANY’S POST-HEARING BRIEF

I. INTRODUCTION

This case stems from Patricia Raymond's ("Complainant") July 8, 2021 Complaint. Within the Complaint she alleges that on February 23, 2021, she suffered a power surge after being informed that a contractor for Ohio Edison Company ("Ohio Edison" or "Company") would replace her meter with a smart meter.

The Complaint should be dismissed for several reasons. *First*, there is no evidence that a power surge occurred. In fact, the evidence supports an affirmative finding that a power surge did not occur. Ohio Edison's witness explained that had a power surge occurred, there would have been evidence in the meter box. There was not.

Second, there is no evidence of any connection between Ohio Edison's supply of electricity and the alleged damage to Complainant's appliances. Indeed, when Ohio Edison's contractor investigated Complainant's concerns, he found that Complainant had left her refrigerator door open, which was the source of the beeping.

Third, there is no evidence to support the conclusion that Ohio Edison's installation practices were inadequate. Complainant presented no evidence that Ohio Edison did not properly install the smart meter, or otherwise did not properly maintain its distribution system.

Fourth, there is no evidence to support the conclusion that Ohio Edison's service to Complainant was unreasonable or unreliable. Quite the opposite. When notified of Complainant's concerns, Ohio Edison investigated her concerns and could not find any evidence of a power surge or that its actions caused the alleged damages to her appliances.

For these reasons, and those explained below, Complainant failed to meet her burden in this proceeding and the Complaint against Ohio Edison should be dismissed with prejudice.

II. STATEMENT OF FACTS

Complainant resides at 3790 Woodbury Oval, Stow, OH 44224.¹ On February 23, 2021, Wellington Energy Inc. (“Wellington”), replaced Complainant’s smart meter on behalf of Ohio Edison.² Wellington has installed over 1.75 million smart meters for Ohio Edison’s sister companies in Pennsylvania and over 401,000 smart meters in Ohio.³

Wellington completed the smart meter installation without incident.⁴ However, Complainant testified that soon after the Wellington employee notified her that he was going to switch her meter, she heard a “loud crack,” like a shotgun, and then her appliances started “going crazy.”⁵ Complainant testified that her oven and microwave were flashing but soon reset themselves and returned to normal functions.⁶ She could not state whether this was similar behavior for her appliances after a power outage because she was never in her kitchen when power was restored.⁷ Nor could she state whether she lost power when Wellington replaced the meter.⁸ She then contacted Wellington and complained that her refrigerator was beeping.⁹

A Wellington foreman subsequently conducted a field investigation the same day.¹⁰ His investigation confirmed that there were no signs of a power surge, overheating, arcing, or damaged components in the meter socket.¹¹ The Wellington foreman looked for signs of arcing, burning, overheating, and other signs of a power surge or similar electrical fault at the meter

¹ Complaint, at 1.

² Pre-Filed Testimony of John Ahr, Company Ex. 1, 6:1-2 (“Ahr Testimony”); Record of Proceeding 7:6-9 (“Tr.”).

³ Ahr Testimony, Company Ex. 1, 6:2-4.

⁴ Ahr Testimony, Company Ex. 1, 6:7-8.

⁵ Complaint, at 5; Tr. 30:17; Ahr Testimony, Company Ex. 1, at 13 (Exhibit JA-002).

⁶ Tr. 7:13-16, 22:2-3, 25:5-9, 29:1-4, 42:3-6. Complainant’s daughter, Joelle Nickel, attempted to testify on Ms. Raymond’s behalf. *See, e.g.*, Tr. 39:2-19. Ms. Nickel does not have any personal knowledge of the events underlying the Complaint. Tr. 16:24-17:4. Accordingly, her statements should be disregarded for lack of personal knowledge and hearsay. Evid. R. 602, 802.; Tr. 17:2-11.

⁷ Tr. 27:3-9.

⁸ Tr. 30:1-12.

⁹ Ahr Testimony, Company Ex. 1, 6:8-9.

¹⁰ Ahr Testimony, Company Ex. 1, 6:9-11.

¹¹ Ahr Testimony, Company Ex. 1, 6:9-11, 7:10-13.

socket but found no such evidence.¹² The fact that Ms. Raymond's electric appliances and devices within the home had power after the smart meter installation indicates that no power surge occurred from the meter.¹³ Had a surge occurred on the timeline that Complainant suggests, i.e. immediately upon reconnecting power, the technician would have observed the surge when installing the smart meter.¹⁴ No such observation was made.¹⁵

The foreman also assisted Complainant with her appliance damage and discovered that Complainant had left her refrigerator door open, which caused her refrigerator to beep when the internal temperature rose.¹⁶ After unplugging and plugging the refrigerator back in with the door shut, the alarm stopped.¹⁷ The Wellington foreman also inspected Complainant's in-home vacuum system. Although he found that the vacuum was receiving power, the switch to the 20-year-old appliance was working only sporadically.¹⁸

Complainant subsequently contacted technicians to repair her appliances. Notably, none of these technicians appeared at the hearing in this matter, and therefore all "evidence" presented by Complainant regarding their alleged findings is inadmissible hearsay.¹⁹ Moreover, the technicians' findings, as documented in various reports and/or invoices do not support a finding that a power surge occurred. On the contrary, all the purported issues appear to have been caused by normal wear and tear and/or neglect by Complainant. This evidence should be given no weight, and certainly should not support an award of money damages to Complainant since it is clear these technicians were hired for ordinary household maintenance.

¹² Ahr Testimony, Company Ex. 1, 7:10-13.

¹³ Ahr Testimony, Company Ex. 1, 7:13-16.

¹⁴ Ahr Testimony, Company Ex. 1, 7:19-20.

¹⁵ Ahr Testimony, Company Ex. 1, 7:20-21.

¹⁶ Ahr Testimony, Company Ex. 1, 6:12-17. Complainant disputed this fact at the hearing. Tr. 37:10-15. This report is based on the contemporaneous report made by Wellington. Tr. 48:3-13.

¹⁷ Ahr Testimony, Company Ex. 1, 6:17-18.

¹⁸ Ahr Testimony, Company Ex. 1, 6:18-20; Tr. 24:7-14.

¹⁹ Tr. 12:21-13:2.

On February 26, 2021, Affordable Service investigated Complainant's concerns that her refrigerator would not turn on.²⁰ The invoice does not reveal that any repairs were made or that there was any problem with her refrigerator, beyond the unsupported and non-contextual speculation that there was a "possible electric board" problem.²¹ There is no evidence that the technician replaced the electrical board, and no evidence that her refrigerator is not currently working without such replacement. Moreover, when the Wellington foreman left Complainant's residence after investigating her concerns, her refrigerator was working.²² Complainant testified that the technician identified a problem with the refrigerator's physical switch.²³

Also on February 26, 2021, Greer Heating & Air Conditioning serviced Complainant's furnace.²⁴ The invoice indicated a standard service call where the technician "service[d] ... the Trane furnace and all controls. Cleaned flame sensor."²⁵ For this service call, Greer invoiced Complainant \$65.²⁶ Additionally, Greer indicated that it "Replaced the T/stat [thermostat] with w/r IF86-344 T/stat" and checked the operation for an additional \$50.²⁷ The invoice does not indicate what, if anything, was wrong with the thermostat or what caused any such issue with the thermostat.

However, Complainant alleges that although "[t]he thermostat was working fine," Complaint "was uncomfortable with [her] furnace," so she had Blind & Sons service the furnace on March 2, 2021.²⁸ Blind & Sons noted that the "system [was] running" but that the "control

²⁰ Applicant's Exhibits at 11 (Affordable Service Invoice).

²¹ Applicant's Exhibits at 11 (Affordable Service Invoice) (emphasis added).

²² Ahr Testimony, Company Ex. 1, 6:14-18.

²³ Tr. 8:17-20.

²⁴ Applicant's Exhibits at 12 (Greer Heating Invoice).

²⁵ Applicant's Exhibits at 12 (Greer Heating Invoice).

²⁶ Applicant's Exhibits at 12 (Greer Heating Invoice).

²⁷ Applicant's Exhibits at 12 (Greer Heating Invoice).

²⁸ Tr. 9:20-23; Applicant's Exhibits at 10 (Blind & Sons Invoice).

board was not set correctly for single stage thermostat.”²⁹ He reset the control board for a delay between the two stages and recommended the addition of a surge protector for the control board.³⁰ He did not, however, recommend a surge protector for the thermostat, which Complainant alleges was damaged as a result of the alleged surge. There is also no evidence that the furnace control board was originally programmed correctly. At most, Blind & Sons corrected a problem caused by Greer.³¹

On March 9, 2021, Sundance Ltd. investigated Complainant’s concerns regarding her central vacuum. Its invoice indicated only a “Service Call” and “Central Vac Switch” for a total invoice of \$117.43.³² Although not noted, it appears Sundance replaced the switch for \$15, but did not indicate what caused the issue with the vacuum switch.³³ Wellington’s foreman, when he investigated, noted that the 20-year-old vacuum switch was receiving power, but working only sporadically.³⁴ At hearing, Complainant admitted that the vacuum had not been serviced for at least 10 years.³⁵

Complainant also alleges that the purported power surge caused damage to her refrigerator resulting in the loss of food. She requests reimbursement of \$200 of spoiled food, for which she provided no receipts.³⁶ She also claims repairs to her televisions and cable service, but provided no evidence of such repairs, and withdrew these claims at the hearing.³⁷

²⁹ Applicant’s Exhibits at 10 (Blind & Sons Invoice).

³⁰ Applicant’s Exhibits at 10 (Blind & Sons Invoice). Complainant did not allege that the furnace control board was affected by the alleged power surge—only that the thermostat was affected and replaced. Tr. 9:9-22. There is no evidence that there was any issue with the control board, other than being improperly programed, unrelated to any Ohio Edison action.

³¹ Tr. 26:20-27:2. The alleged improper programing of the control board was not caused by Ohio Edison.

³² Applicant’s Exhibits, at 9 (Sundance Invoice).

³³ Applicant’s Exhibits, at 9 (Sundance Invoice).

³⁴ Ahr Testimony, Company Ex. 1, 6:18-20.; Tr. 24:7-14.

³⁵ Tr. 24:10-14.

³⁶ Tr. 33:6-10; Applicant’s Exhibits, at 8.

³⁷ Tr. 20:3-4, 15:18-19.

In sum, Complainant claims, that Ohio Edison is responsible for damage to several appliances due to a power surge but failed to present any evidence that (a) a surge occurred or that (b) said power surge damaged her appliances. Accordingly, absent the threshold finding that a power surge even occurred, Complainant cannot sustain her burden of proof in this power surge case. Accordingly, the Commission should dismiss her Complaint with prejudice.

III. LEGAL ARGUMENT

A. Legal Standard

In complaint proceedings, the burden of proof rests with the Complainant.³⁸ Therefore, a complainant must present evidence in support of the allegations made in a complaint. Moreover, in cases like this where a complainant seeks damages because of a power surge, the complainant has the burden of proving four factors specific to that cause of action.³⁹

Here, Complainant failed to demonstrate (1) that a power surge occurred, (2) any causal relationship between her allegedly damaged appliances and Ohio Edison's actions, or (3) that Ohio Edison failed to reasonably correct and/or respond to her complaint.

B. Complaint Failed to Satisfy the Commission's Four-Factor Test for Power Surge Liability

To establish that Ohio Edison is liable for the power surge that Complainant alleges to have experienced, Complainant must satisfy the four-factor test articulated in *In re Pro Se Commercial Properties*. Specifically, it is her burden to prove:

[1] whether the cause of the problem was in the control of the company, [2] whether the company failed to comply with any statutory or regulatory requirements regarding the operation of its system that could have caused the outage or surge, [3] whether the company's actions or inactions constituted unreasonable service,

³⁸ *Grossman v. Pub. Util. Comm'n*, 5 OhioSt.2d 189, 214 N.E.2d 666 (1966).

³⁹ See *In the Matter of Pro Se Commercial Properties v. The Cleveland Electric Illuminating Company*, Case No. 07-1306-EL-CSS, Opinion & Order, at 6 (Sept. 10, 2008) ("*In re Pro Se Commercial Properties*").

and [4] whether the company acted responsibly in correcting the problem.⁴⁰

“In the absence of evidence showing that [Ohio Edison] failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably, the Commission cannot render a finding that [Ohio Edison] is responsible for the damages to the complainant’s property.”⁴¹

In the present case, Complainant has failed to satisfy any of the four factors or even that a power surge occurred. The Complaint should be dismissed with prejudice, with judgment entered in Ohio Edison’s favor.

1. Complainant Failed to Establish that the Cause of the Problem Was Within the Control of the Company

Complainant failed to adduce evidence to prove that a power surge occurred and therefore that the cause of the problem was within Ohio Edison’s control. Absent this threshold finding, the Commission cannot find that Complainant met her burden of proof. Although she attempted to testify to what the service technicians orally informed her, the Commission properly excluded these out-of-court second-hand statements as hearsay.⁴²

Instead, the only evidence she presented was that she heard a “loud crack” and her microwave and oven started blinking, and her refrigerator started beeping.⁴³ Soon thereafter, the microwave and oven went back to normal operations.⁴⁴ She could not testify that this behavior from her microwave and oven was any different to their behavior after a power outage.⁴⁵

⁴⁰ *Id.* at 6 (citing cases).

⁴¹ *Id.*

⁴² Tr. 12:21-13:2.

⁴³ Complaint, at 5; Tr. 30:17; Ahr Testimony, Company Ex. 1, at 13 (Exhibit JA-002).

⁴⁴ Tr. 7:13-16, 25:2-9.

⁴⁵ Tr. 27:3-9.

Ohio Edison’s expert witness testified that the “loud crack” was probably just the force of the meter contact and sitting into the socket jaws of the meter box.⁴⁶ In the unlikely event it was a power surge, there would have been signs of electrical damage to the meter—but there were no such signs of damage on Complainant’s meter.⁴⁷ Moreover, a power surge does not create a “loud crack” like sound—instead it is more often associated with a buzzing or crackling sound,⁴⁸ a sound Complainant never reported hearing.

As Ohio Edison’s expert witness testified, the more likely cause of any problem with her electrical supply occurred downstream of her meter—i.e., within the Property.⁴⁹

According to a study by the Electric Power Research Institute, as many as 80% of all power disturbances originate inside the home or business. While lightning, ice storms, high winds, trees falling on power lines, car-pole crashes, normal electric circuit operations—even birds and squirrels—cause their share of power disruptions, most disturbances are caused by the day-to-day operation of ordinary household equipment and appliances. Among the biggest culprits are electrical devices with motors or compressors that cycle on and off throughout the day. These include heating and air conditioning systems, refrigerators, washing machines, pumps, fans and the like. Household appliances like vacuum cleaners and blenders, and power tools like saws, sanders, and drills are another common cause of electrical disturbances. Moreover, the condition of the wiring of Ms. Raymond’s home could be another contributing factor.⁵⁰

Correlation does not imply causation,⁵¹ and Complainant presented no evidence of any causality between the meter replacement and the alleged damage to her appliances. Accordingly, Complainant failed to demonstrate that Ohio Edison controlled the cause of her appliance damage.

⁴⁶ Ahr Testimony, Company Ex. 1, 8:1-6.

⁴⁷ Ahr Testimony, Company Ex. 1, 6:9-11, 7:10-23.

⁴⁸ Ahr Testimony, Company Ex. 1, 8:9-11.

⁴⁹ Ahr Testimony, Company Ex. 1, 8:12-15.

⁵⁰ Ahr Testimony, Company Ex. 1, 8:15-9:2.

⁵¹ *State v. Madison*, 2020-Ohio-3735, ¶ 236, 160 Ohio St. 3d 232, 155 N.E.3d 867 (“[C]orrelation does not prove causation...”), *reconsideration denied*, 160 Ohio St. 3d 1410, 153 N.E.3d 116, *cert. denied*, 141 S. Ct. 2597 (2021).

2. Complainant Failed to Establish that the Company Failed to Comply with Any Statutory or Regulatory Requirements Regarding the Operation of its Systems that Could have Caused the Outage or Surge

Complainant did not allege that Ohio Edison and/or Wellington failed to comply with any specific statutory or regulatory requirement, nor did she prove that Ohio Edison failed to provide adequate service. When asked directly on the stand to identify any such violation, she testified that she did not know.⁵² Moreover, there is no evidence that Wellington improperly uninstalled the original meter and/or improperly installed the new smart meter.

Complainant failed to present any evidence concerning the meter installation—other than a loud crack when the meter was installed—and is not competent to provide any such testimony because she did not observe the meter installation.⁵³ However, Ohio Edison’s witness testified that the meter was installed pursuant to Ohio Edison’s Meter Standards & Practices Manual.⁵⁴

He described the procedure as follows:

Exchanging an existing meter with a smart meter takes only a few minutes. Typically, the technician will come to the door and advise any occupants of the new meter installation. The technician will also advise the occupants that their electrical service may be briefly interrupted. The technician will then proceed to the meter socket and complete a visual inspection of the meter socket exterior and adjoining connections. The technician will also check for signs of tampering, broken or missing meter seals, broken meter locks, or other damage, and then remove the meter socket cover. With the meter socket cover removed, the technician will visually inspect the meter socket interior for excessive heating, damaged components, signs of diversion, etc. and inspect all connections for any loose, strained, or heated wiring. The existing meter is then removed and the meter base and meter socket jaws are examined for heating and mechanical damage. The new meter is then installed and the meter socket cover is replaced and a new meter socket seal is installed.⁵⁵

⁵² Tr. 18:19-23.

⁵³ Tr. 31:2-5; Evid. R. 602.

⁵⁴ Ahr Testimony, Company Ex. 1, 5:12-15.

⁵⁵ Ahr Testimony, 4:20-5:11.

Complainant presented no evidence that Wellington did not follow this procedure.⁵⁶ Indeed, upon investigating Complainant's complaint, Wellington deemed the meter installation to have been routine and did not identify any signs of negligence.⁵⁷

Complainant has not met her burden of establishing that Ohio Edison did not comply with any statutory or regulatory requirements regarding the operation of its systems that could have caused the outage or surge.

3. Complainant Failed to Establish the Company's Actions Constituted Unreasonable Service

Complainant failed to satisfy her burden of demonstrating that Ohio Edison's actions constituted unreasonable service. Complainant submitted no evidence that the replacement of her meter was anything but routine.⁵⁸ Moreover, since the meter exchange on February 23, 2021, Complainant reported no issues with her electric supply⁵⁹—a position inconsistent with the existence of a power surge.⁶⁰

After Complainant reported her concerns to Wellington, Wellington sent a foreman to investigate within half an hour of her making the complaint.⁶¹ Even though not required, Wellington's foreman attempted to assist Complainant with diagnosing the cause of her appliance issues.⁶² Ohio Edison's witness testified that in his opinion, Ohio Edison (and its

⁵⁶ Her sole complaint is that she was not advised to unplug her appliances. Tr. 18:23-19:3. A meter install is nothing more than a brief power interruption, unlikely to cause a power surge. Ahr Testimony, Company Ex. 1, 5:1-2, 7:17-23. Complainant adduced no evidence that such an advisory is required.

⁵⁷ Ahr Testimony, Company Ex. 1, at 15 (Ex. JA-002).

⁵⁸ See Ahr Testimony, Company Ex. 1, 7:17-23, 15 (Ex. JA-002).

⁵⁹ Tr. 27:13-18.

⁶⁰ Ahr Testimony, Company Ex. 1, 7:13-16 ("The fact that Ms. Raymond's electric appliances and devices within the home had power after the smart meter installation supports the conclusion that no power surge occurred from the meter.").

⁶¹ Tr. 11:20-24; Ahr Testimony, Company Ex. 1, 6:5-11.

⁶² Ahr Testimony, Company Ex. 1, 9:3-11.

contractor) acted reasonably in responding to Complainant's concerns.⁶³ Complainant failed to present any evidence to the contrary.

4. Complainant Failed to Establish that the Company Did Not Act Responsibly In Responding to the Problem

There is no evidence that Ohio Edison did not act responsibly in responding to Complainant's claim of a power surge. When Complainant first voiced her concerns, a Wellington foreman investigated her claims the same day.⁶⁴ Although not required to do so, the Wellington foreman inspected the appliances that she claims were damaged.⁶⁵ Wellington's notes indicated that the foreman discovered that the door to the refrigerator had been left open and that the 20-year-old vacuum switch was working, although only intermittently.⁶⁶ Wellington's investigation also revealed that there was no evidence of a power surge, overheating, arcing, or damaged components in the meter socket.⁶⁷ Complainant has not experienced any other issues with her power supply since her meter was replaced.⁶⁸

Commission precedent is clear that "[i]n the absence of evidence showing that [the utility] failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably, the Commission cannot render a finding that [the utility] is responsible for the damages to the complainant's property."⁶⁹ Complainant did not (and cannot) meet her burden of proof as to the fourth factor of the *In re Pro Se Commercial Properties* test. Her Complaint should be dismissed accordingly,

⁶³ Ahr Testimony, Company Ex. 1, 10:21-11:7.

⁶⁴ Ahr Testimony, Company Ex. 1, 6:5-11.

⁶⁵ Ahr Testimony, Company Ex. 1, 9:3-11.

⁶⁶ Ahr Testimony, Company Ex. 1, 6:12-20.

⁶⁷ Ahr Testimony, Company Ex. 1, 6:9-11.

⁶⁸ Tr. 27:13-18.

⁶⁹ *In re Pro Se Commercial Properties*, Case No. 07-1306-EL-CSS, Opinion & Order at 6 (Sept. 10, 2008).

IV. CONCLUSION

Complainant has not met her burden of proof in this case. For all the foregoing reasons, the Complaint should be dismissed with prejudice and/or Ohio Edison Company should be granted judgment in its favor on the Complaint.

Respectfully submitted,

/s/ Christopher A. Rogers

Christopher A. Rogers (100781)
BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP
200 Public Square, Suite 2300
Cleveland, Ohio 44114-2378
Telephone: 216-363-4500
Facsimile: 216-363-4588
Email: crogers@beneschlaw.com
Counsel for Ohio Edison Company

CERTIFICATE OF SERVICE

On May 27, 2022, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record in this proceeding. A service copy has been sent by U.S. Mail to the Complainant at the following address:

Patricia A. Raymond
3790 Woodbury Oval
Stow, OH 44224

/s/ Christopher A. Rogers

Attorney for Ohio Edison Company

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

5/27/2022 2:42:19 PM

in

Case No(s). 21-0787-EL-CSS

Summary: Brief Ohio Edison Company's Post-Hearing Brief electronically filed by
Mr. Christopher Rogers on behalf of Ohio Edison Company